

Remarks

Finality of the Final Rejection is Inappropriate

Contrary to accepted practice the prior Office Action gave no reasons and provided no information that related the rejection to the claims on file. Therefore the first rejection was inappropriate. And the final rejection is the first procedurally adequate rejection. Consequently the finality of the final rejection should be withdrawn.

Drawings

A proposed drawing correction for Figure 1 is presented herewith. In it, the arrow-headed line 100 refers to the knife holder because the whole subject of Figure 1 is the knife holder.

Specification

The specification is amended to comply with the Examiner's suggestions in numbered paragraph 4 of the Office Action.

Claim Rejection-35 USC 112

The recitation "spaced apart from the cutting plane" is held to be indefinite in that the location of the cutting plane has not been positionally defined.

New claim 13 was made more precise to overcome Fassin in a clear way and to identify what the "cutting plane" means.

The "cutting plane" is identified with the added feature "in which in a cutting stroke for section production, a specimen with a specimen holder moves relative to a knife edge". This is disclosed on page 5, lines 5 and 6 of the continuation of Internal Application PCT/EP99/03175. The person skilled in the art is able to interpret Fig. 1 and Fig. 2 of the application in such a way that the cutting stroke is done in the cutting plane with the reference number 14 in Fig. 2,

because he or she knows the manner in which microtomes work. The different types of microtomes with different relative movements between specimen and knife are disclosed in the second chapter of page 1 of the application. Furthermore, Fassin, column 1, lines 31 to 43, tells us that since 1931 it is well known by the person skilled in the art how rotary microtomes work. Other microtomes also cut such successive sections by the aforementioned relative movements, which is also well known by the person skilled in the art in the field of microtomes.

The further added features of new claim 13 make clear that the functional position of the plate in the invention persist during operating function of the microtome because it is the object of the invention “to provide a knife holder with a guard against cutting injuries which is also effective during the performance of cutting operations and section removal”. This feature for clarification is “wherein said plate is arranged in a way that performance of cutting operations and section removal can take place even with the plate situated in its operating position”. This feature is disclosed on page 4, lines 4 to 7 and page 9, lines 2 to 4.

Furtheron the arrangement of the plate is formulated in a clear way by “... an arrangement of the plate in this operating position parallel to the cutting plane, on the side of the knife carrier remote from the specimen holder and the specimen received on it, and at the same time the plate faces the cutting edge of the knife”. This is disclosed at the bottom of page 8 and at the top of page 9. For the manner of the aforementioned facing direction of the plate, we have put in concrete terms “the plate faces the cutting edge of the knife with a small gap in the cutting direction between the cutting edge of the knife and the edge of the plate toward the knife with a maximum width chosen such that the joint of a person’s finger cannot come into contact with the cutting edge of the knife – in order to prevent unintentional gripping of the knife edge – but sufficient for a section taken from the specimen to be able to slide through this gap between the

plate and the back face of the knife to ensure sectional removal”. This is disclosed on page 9, lines 1 to 12.

Claim Rejection 35- USC 102 and 35 USC 103

Claims 1, 2, 4, 6 7 and 11 are rejected as being anticipated by Fassin.

Claim Rejection 35 USC 103

Claims 3, 5 and 12 are rejected as being unpatentable over Fassin.

Valid rejection under 35 USC 102 requires that each feature of a rejected claim be disclosed in a single reference. “For anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present.” MPEP 706.02(a)

Fassin does not disclose each feature of the rejected claims and the subject matter is not obvious to a person ordinary skilled in the art.

The function of the finger protection device of Fassin is described on page 3 last paragraph and at the top of page 4 of the continuation of International Application PCT/EP99/03175. It is obvious that the functions are different. Fassin teaches to pivot the finger protection guard away before the cutting operation begins. During the cutting operation and during the section removal free access to the cutting edge is possible and therefore the danger of injuries. The invention has no free access to the cutting edge during the cutting operation or during the section removal.

This advantage is realized by the arrangement of the plate of the invention positioned parallel to the cutting plane on the side of the knife remote of the specimen, whereby the plate faces the cutting edge of the knife with a gap. Thereby the width of the gap is chosen in a way

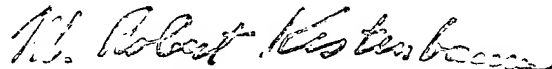
that the fingers are protected against injuries but the width of the gap is great enough for sliding through the specimen.

In Fassin the plate for the finger guard is not parallel to the cutting plane on the side of the knife, because it is positioned behind the cutting plane, i.e. on the side of the microtome (reference number M of Fassin) and behind the knife and extends from there until within the cutting plane at its position 24. In the present invention the plate for the finger guard is parallel to and remote from the cutting plane of the specimen. Therefore it is placed in front of the cutting plane, that means at the side on which the fingers of a person are working. Furthermore, in Fassin there is no functional gap between the cutting edge of the knife and the edge of the guard plate during performance of cutting operations and section removal, because instead there are members 14, 14' placed between the knife and the guard plate. In this position the guard is away from the knife in a manner that the guarding function is given up.

Wherefore, further consideration and allowance of the claims is respectfully requested.

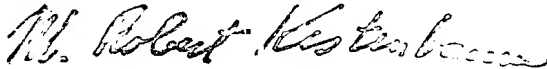
A one-month extension of time in which to respond to the outstanding Office Action is hereby requested. Credit Card Payment Form PTO-2038 is enclosed to cover the prescribed Large Entity one-month extension fee of \$110.00. Please charge any additional fees or credit any overpayments to Deposit Account 11-0665. A duplicate of this page is enclosed for this purpose.

Respectfully submitted,



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I hereby certify this correspondence is being deposited with the US Postal Service First Class Mail in an envelope with sufficient postage to PO Box 1450, Commissioner for Patents, Alexandria, VA 22313-1450 on March 10, 2004.



M. Robert Kestenbaum